IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

MFA.No. 505 of 2002(A)

OPMV.683/1995 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, KALPETTA
.....

APPELLANT: APPELLANT/PETITIONER:

SAROJINI, W/O. KUMARAN, (SHE IS BECOME UNCONSCIOUS DUE THE ACCIDENT AND IT IS STILL CONTINUES).
REP. BY HER HUSBAND KUMARAN, KARIMBUZHA HOUSE, ANAPPARA, AMBALAVAYAL P.O., SULTHAN BATHERY TALUK.

BY ADV. SRI.LLOYD JOSEPH VIVERA

RESPONDENTS: RESPONDENT/RESPONDENT:
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1. N.J. MATHEW, S/O. JOHN, THARIPPOYIL HOUSE, MARATHATT, THOMATTUCHAL AMSOM DESOM, SULTHAN BATHERY, NOW RESIDING AT NARIPPOYIL VEEDU, PADICHURA POST, PULPALLY, (DRIVER OF KRD 6103 JEEP).

2. SREEJITH K.V., S/O. UNNIKRISHNAN, KUTTIYIL HOUSE, KUPPAKKOLLI, AMBALAVAYAL AMSOM DESOM, SULTHAN BATHERY, (DRIVER OF KLW 3496 JEEP).

3. K. SULOCHANA, D/O. RAMACHANDRA MENON, "ASWATHI", H.NO.4/272, AMBALAVAYAL, SULTHAN BATHERY, (OWNER OF KRD 6103 JEEP).

4. V.P. MODEENKUTTY, S/O. SAIDALI, VATTAPPARAMBIL HOUSE, AMBALAVAYAL AMSOM DESOM, SULTHAN BATHERY, (OWNER OF KLW 3496 JEEP).

**5. UNITED INDIA INSURANCE COMPANY LTD.,
SULTHAN BATHERY,
(P.NO.100311/31/50/11/0046/94 (KRD-6103 JEEP
AND P.NO.100311/31/50/11/1021/94 KLW-3496 JEEP).**

**BY ADV. SRI.RAFFEEKH.K --- R1
SRI.MATHEWS JACOB (SR.) --- R5
SRI.P.JACOB MATHEW
SRI.ABRAHAM P.GEORGE --- R4**

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 02/11/2007 ALONG WITH MFA NO. 506 OF 2002, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K.HEMA, JJ.

M.F.A.No. 505 of 2002

Dated this the 2nd day of November, 2007

Judgment

Koshy,J.

Appellant/Claimant met with an accident on 2.3.1995. She claimed a compensation of Rs.10 lakhs. The tribunal awarded a total compensation of Rs.87,260/-. The tribunal also found that the accident occurred due to the negligence of the driver of the vehicle insured by the fifth respondent insurance company. The only dispute is regarding the quantum of compensation.

2. As far as the injuries are concerned, the tribunal has given the details of the injury after considering Ext.A3 wound certificate, Ext.A4 disability certificate, Ext.A5 C.T. scan report and Exts.A7 to A10 prescriptions. The tribunal has stated as follows:

> "..... A perusal of the same would show that in the accident the petitioner has sustained the following injuries:
>
> 1. Unconscious due to haemorhagic, ganglia.
>
> 2. Interior temporal to the sutured area.

> 3. Extracranial soft tissue haemotoma right temporal region and severe head injury."
>
> The said documents would further go to show that the petitioner was treated at first in the Priya Hospital, Sulthanbathery and from where he was taken to the Medical College Hospital, Calicut and treated there as an inpatient and thereafter he was treated there as an outpatient. The evidence of PW2 Dr. K. Ibrahim who issued Ext.A6 medical certificate would show that even now the petitioner is being treated by him and now he is having behaviour changes,dimness of vision, menoplegia right lower limp etc. as a result of the head injury and she is physically disabled to do any work."

The tribunal again stated that appellant is not well-oriented, she cannot walk or sit without support and she is having abnormal behaviour due to head injury and accepted disability certificate assessing 30% permanent disability by the doctor. However, only Rs.700/- was taken as the notional income. According to the appellant, she was a coolie earning Rs.2,000/- per month. Husband of the appellant was examined. He also stated that she was a coolie and was getting more than Rs.2,000/- per month, apart from doing household work as a housewife, but, tribunal has fixed only Rs.700/- per month. Under the second schedule, even for a non-earning member, annual notional income is fixed at Rs.15,000/- (Rs.1,250/- per month). We are of the view that at least the above

amount should be fixed as the annual notional income. If that be so, compensation payable will be 15000 x 18 x $\frac{30}{100}$ = Rs.81,000/-.

The tribunal has fixed Rs.45,360/- under this head. Therefore, appellant will be entitled to an additional amount of Rs.35,640/-. Even though it was argued that compensation granted under other heads are very meagre, we are not enhancing the same except for loss of earning. The tribunal found that the appellant was under treatment for six months and she was 100% disabled for six months. Since we have increased the income to Rs.1,250/- per month, she will be entitled to Rs.3,300/- more for loss of actual earning. We are not enhancing the compensation under other heads. The additional compensation of Rs.38,940/- over and above the amount decreed by the tribunal should be deposited by the fifth respondent with 7.5% interest from the date of application till its deposit. On deposit of the amount, appellant is entitled to withdraw the same.

J.B.KOSHY
JUDGE

K. HEMA
JUDGE

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A. No. 505 of 2002

Judgment

Dated:2nd November, 2007